In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 11 Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

MOTION FOR JUDGMENT

The United States of America moves the Court for judgment as prayed in the amended complaint on the ground that there is no genuine issue as to any material fact and the United States is entitled to judgment as a matter of law.

J. LEE RANKIN,
Solicitor General.

JANUARY 1958.

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STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

MOTION FOR DISMISSAL OF CROSS-BILL FILED BY THE STATE OF ALABAMA

The United States of America moves to dismiss the cross-bill filed by the State of Alabama on December 31, 1957, on the ground that this Court has no jurisdiction since the cross-bill constitutes a suit against the United States as to which the United States has not consented.

J. LEE RANKIN,
Solicitor General.

JANUARY 1958.

MEMORANDUM

1. Pursuant to permission theretofore given by this Court, 354 U. S. 515, the United States on November 7, 1957, filed an amended complaint in this case. Between December 24 and 31, 1957, the States of Louisiana, Texas, Mississippi, Alabama, and Florida filed their separate answers to this complaint. None of these answers raises any genuine issue as to any material fact. The issues, as framed by the pleadings, are whether the various states were granted submerged lands and the resources therein only to the extent of three miles from the coast, or three leagues. This depends upon the proper interpretation of the Submerged Lands Act, 67 Stat. 29, 43 U. S. C., Supp. IV, 1301–1315, in the light of certain historic data of which the Court may take judicial notice. For these reasons the United States submits that the case should be decided on the basis of the pleadings, briefs and argument.[1]

2. The State of Alabama, in addition to answering the amended complaint, has designated its answer as a cross-bill against the United States. (Answer of Alabama, pp. 7–8.) Insofar as this response merely re-

[1] Earlier in this proceeding, the United States, in December, 1956, filed a similar motion for judgment against Louisiana, which was then the only defendant. It was pursuant to that motion that the Court heard argument last term. The Court is respectfully referred to the Statement accompanying that motion for a more detailed statement on the appropriateness of the suggested procedure.

states the issue as posed in the complaint of the United States and asks no relief other than a declaration of Alabama's rights under the Submerged Lands Act, the fact that the answer is designated a cross-bill does not require any action by this Court. However, Alabama also asks the Court to issue an order declaring its southern boundary to be six leagues from, and parallel to, the shore. This goes beyond the issue as posed in the amended complaint filed by the United States which relates solely to rights in the submerged lands and resources thereof as granted by Congress. Under the Constitution a state may not sue the United States without its consent. *Kansas* v. *United States,* 204 U. S. 331; *Arizona* v. *California,* 298 U. S. 558. Congress has not consented either in the Submerged Lands Act or elsewhere. The cross-bill should therefore be dismissed.

3. All of the defendant Gulf States have joined in a motion for a pretrial conference. The purposes of this conference, as set forth at page 4 of the motion, are to determine the length and order of argument, whether the amended complaint has the effect of a proceeding *de novo* against Louisiana, discussion of taking evidence before an inferior tribunal or a Special Master, and the timing of briefs.

The United States has no objection to a pretrial conference if the Court believes it would be helpful. However, there is doubt that such a conference is necessary or would be helpful at this time. If the timing for briefs can be agreed upon to the satisfaction of the Court, there appears to be no need for a conference now.

The United States suggests that it be granted 60 days for the filing of its brief and that the States be granted 60 days for reply. The United States should have until one week before argument for rebuttal. Louisiana should be given the right to file at the same time as the other States such additional brief as it desires, in the light of the contents of the present complaint.

It appears to the United States premature to fix the order or time of argument now. Our present view is that the United States should be given an hour for opening, each State an hour for reply, and that the United States should be given one-half hour of rebuttal time to follow the reply of each State. If Louisiana believes it needs another hour for argument in addition to the time it has already had, the United States would not object to its being given the same time as other States. The United States has no views as to the order of replies by the States.

Although Louisiana in its original answer asked that the cause be first considered by a United States district court, none of the answers to the amended complaint, including that of Louisiana, repeats that request or asks for a Special Master. As previously pointed out, we believe that the cause is one which should be determined on the pleadings, briefs and argument. There appears to be no need for a pretrial conference on reference of the cause to an inferior tribunal or to a Special Master since that issue is not being pressed.

For the foregoing reasons we do not believe that a pretrial conference is necessary. However, if the

Court determines that it would simplify or expedite disposition of the cause, the United States has no objection to such a conference.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

JANUARY 1958.

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